

Steering Committee:

Bill Callegari, Chairman
Jose Menendez, Vice Chairman

Rafael Anchia
Drew Darby
Joe Deshotel

Harold Dutton
Susan King

Tryon Lewis
Eddie Lucio III
Geanie Morrison

Elliott Naishtat
Rob Orr

Joe Pickett
Ralph Sheffield
Todd Smith

HOUSE RESEARCH ORGANIZATION

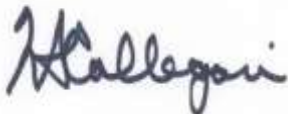
daily floor report

Thursday, May 12, 2011
82nd Legislature, Number 75
The House convenes at 9:30 a.m.
Part One

Fifty-two bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the Major State Calendar and the joint resolution on the Constitutional Amendments Calendar are analyzed in Part One of today's *Daily Floor Report* and are listed on the following page.

Today is the final day under the House Rules that the House may consider on second reading House bills or House joint resolutions listed on a daily or supplemental House calendar.

The House will consider a Congratulatory and Memorial Calendar today.



Bill Callegari
Chairman
82(R) – 75

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Thursday, May 12, 2011

82nd Legislature, Number 75

Part One

		Page:
HB 2593 by Truitt	Limiting amounts, payments, and renewals of payday and auto title loans	1
HB 9 by Branch	Establishing performance-based funding for higher education	7
HB 400 by Eissler	Requirements for schools and teacher contracts and compensation	13
HJR 48 by C. Anderson	Spouses inheriting a totally disabled veteran's homestead tax exemption	26

- SUBJECT:** Limiting amounts, payments, and renewals of payday and auto title loans
- COMMITTEE:** Pensions, Investments and Financial Services — committee substitute recommended
- VOTE:** 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey
0 nays
- WITNESSES:** *(On original bill:)*
For — None

Against — Jennifer Allmon, Texas Catholic Conference, Roman Catholic Bishops of Texas; *(Registered, but did not testify:)* Kelly Rand, Catholic Charities, Diocese of Fort Worth; Richard Tomlinson; Tracey Whitley

On — Ann Baddour, Texas Appleseed; Don Baylor, Center for Public Policy Priorities; Ryan Brannan, Texas Public Policy Foundation; Lori Henning, Texas Association of Goodwills; Tim Morstad, AARP; Suzii Paynter, Christian Life Commission, Baptist General Convention of Texas; *(Registered, but did not testify:)* Sealy Hutchings, Office of Consumer Credit Commissioner; Rob Norcross, Consumer Service Alliance of Texas; Michael Price, Texas Coalition for Consumer Choice; Alex Vaughn, Cash America International, Inc.)
- BACKGROUND:** Finance Code, title 5 regulates the protection of consumers of financial services. Within that title, ch. 393 regulates credit services organizations (CSOs), one of which is defined as a person who provides, or represents that the person can or will provide, for the payment of valuable consideration, any of the following services with respect to the extension of consumer credit by others: (a) improving a consumer’s credit history or rating, (b) obtaining an extension of consumer credit for a consumer, or (c) providing advice or assistance to a consumer with regard to (a) or (b).
- DIGEST:** CSHB 2593 would add a new subch. H to Finance Code, ch. 393 to regulate certain characteristics of payday and auto title loans. The subchapter would define a “credit access business” (CAB) as a credit services organization (CSO) that obtained for a consumer or assisted a

consumer in obtaining an extension of consumer credit in the form of a payday loan or an auto title loan.

Limits on loan amounts. The bill would establish limits on the cash value of a payday or auto title loan. These limits would be scaled to the borrower's gross family income and tiered based on whether that gross family income was above or below 100 percent of the federal poverty level for a family of four.

The limit on the value of a payday loan would be 25 or 32 percent of a borrower's monthly family income, depending respectively on whether that family income was no more than or greater than the federal poverty level.

The limit on the value of an auto title loan would be the lesser of:

- 3 or 5 percent of a borrower's annual family income, depending respectively on whether that family income was no more than or greater than the federal poverty level; or
- 70 percent of the retail value of the motor vehicle.

The bill would require a CAB to keep a record of the document used to establish a borrower's family income.

Partial payments of loans. The bill would require a payday or auto title loan to be payable in two-week or one-month increments or in a single payment, and the bill would require partial payments of the loan principal to be accepted.

Limits on loan renewals, refinancing, or installment payments. Under the bill, a payday loan could not be renewed, refinanced, or partially paid more than four times if the loan was payable monthly or six times if the loan was payable every two weeks. An auto title loan could not be renewed, refinanced, or partially paid more than five times if the loan was payable monthly or eight times if the loan was payable every two weeks.

The charging of a fee on a late or missing payment would be considered a loan refinancing, as would a loan made to a consumer within seven days of the consumer's payment of a previous loan from the same person.

Extended repayment plans. If a loan had been renewed, refinanced, or partially paid the maximum number of times allowed but still was not fully paid off, a CAB could arrange an extended repayment plan for the consumer but could not charge fees in connection with such a plan. An extended repayment plan would have to consist of four equal payments of principal and interest, with all principal and interest paid in full with the fourth payment. The plan payments would have to occur with the same two-week or one-month frequency that was initially required in the loan. A borrower would default if he or she failed to make any scheduled payment under the extended repayment plan.

A consumer could enter into an extended repayment plan for a payday loan only once in a 12-month period or, for an auto title loan, only once in a 14-month period. If a CAB arranged a new loan for a consumer who had entered into an extended repayment plan within the last 12 or 14 months, as applicable, and if the CAB then allowed the new loan to be renewed, refinanced, or partially paid the maximum number of times allowed, the lender or person making the cash advance, as applicable, would forfeit any claim to the debt principal and, in the case of an auto title loan, would have to return the auto title to the consumer.

Additional provisions for auto title loans. A CAB could seek reimbursement from a consumer on behalf of a lender for reasonable and documented costs associated with the sale of a vehicle surrendered due to default. The Finance Commission could, by rule, limit or prohibit unreasonable associated fees. The sale of a surrendered vehicle would satisfy all outstanding and unpaid debt from an auto title loan. The borrower would not be liable for any deficiency resulting from the sale, and the lender would have to pay the borrower for any surplus resulting from the sale.

The Finance Commission could, by rule, require that a disclaimer accompany an automobile club membership offer made in connection with an auto title loan. The disclaimer would have to state the benefits and limitations of the offer and that any contract documenting the customer's agreement to purchase an automobile club membership would have to bear the customer's signature.

The bill would make it a violation to fail to return an auto title after full repayment of an auto title loan.

Effective date. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 2593 would break the exploitative cycle of debt that too often results from payday and auto title loan use by regulating key features of these loans, which currently are not meaningfully regulated in any way. The bill would limit predatory practices, protecting consumers and stabilizing the market for legitimate operators.

CSHB 2593 is part of a package of three bills, along with CSHB 2592 and CSHB 2594, designed to address a range of concerns associated with payday and auto title lending. The trio of bills is the negotiated product of more than 40 hours of mediation between consumer advocacy groups and the payday and auto title lending industry. These bills would bring the industry, which has grown rapidly under the very minimal restrictions of the CSO chapter, under meaningful state regulation for the first time.

The bills would prevent predatory practices and provide recourse for consumers who would otherwise be caught in the cycle of debt. CSHB 2593 would establish limits on the value of payday and auto title loans, tying the principal of a loan to the consumer's ability to repay.

The bill also would place limits on the allowable number of loan renewals, which are the centerpiece of a debt trap. The bill would require partial payments to be accepted and create extended repayment plans, which are important tools that would allow consumers to avoid the cycle of debt while also paying off their obligations.

These provisions and others would represent a massive first step in establishing consumer protections in a previously unregulated industry. The trio of bills would eliminate many problems in the industry, narrowing the scope of focus needed to address remaining problems in the next legislative session, should the cycle of debt persist.

At the same time, the bills would protect the businesses and employees in the industry and consumers' access to these short-term loans. The bills would keep the affected businesses, CABs, in ch. 393 because they are loan brokers, not lenders. The bill would not allow any agency to cap the fees a CAB could charge for obtaining or renewing a payday or auto title loan. In fact, CSHB 2593 would not restrict CAB fees in any way except by (a) establishing a limit on the number of times a loan could be renewed and (b) requiring a surrendered vehicle sale fee to be reasonable. A CAB

could allow the market to set loan fees at whatever level it would support. The only rulemaking the bill would authorize would be extremely limited, enabling the Finance Commission to implement provisions regarding surrendered vehicle sale fees and auto club offer disclaimers.

The bill would establish necessary, valuable loan product requirements, incorporate industry best practices, and allow market competition to bring loan fees down naturally. CABs provide a needed loan-brokering service and deserve to earn a profit. At the same time, loan products have emerged from the absolute laissez-faire approach in this industry that has led to many, many consumer complaints. This package of bills would establish balanced and reasonable regulations that would stabilize the market, benefitting both consumers and businesses.

**OPPONENTS
SAY:**

The restrictive structuring of loan products in CSHB 2593 would drive CABs out of business and interfere with access to the free market for short-term credit. Consumers need a variety of product options, naturally designed by market demand and competition, to manage financial difficulties.

The forfeiture of loan principal and auto title after a second maxing out of renewals would harm CABs' ability to serve Texans that were frozen out of the traditional credit market by allowing these borrowers to evade their obligations and not pay back the principal borrowed. CSHB 2593's forfeiture provisions should be replaced with a mandatory, fee-free extended repayment plan, like the one that would have been optional after the first maxing out of renewals.

**OTHER
OPPONENTS
SAY:**

CSHB 2594 would fail to address one of the core problems of payday and auto title lending: the unbound, exorbitant fees that CSOs charge to arrange and renew loans. Because the bill would not establish fee or interest rate caps, it would not break the cycle of debt that traps families and nabs taxpayer-funded public benefits and charitable assistance given to these families, redirecting this money directly into the pockets of private companies.

The bill also would fail to establish a real-time enforcement database of customer loan use so that violations of ch. 393 could be prevented, rather than tolerating avoidable violations and necessitating the use of the resources of the Office of Consumer Credit Commissioner to enforce the law.

Consumer protection provisions in the bill should be stronger. The number of loan renewals permitted should be reduced, so that the repayment plan escape hatch from the cycle of debt could be accessed sooner. The repayment plan option should not be limited to just once per year or 14 months, and CABs should be required to offer it, not just have the option to offer it. The bill should include language to ensure that CABs could not find a way to offer a similar loan product under a different name to evade enforcement.

While CSHB 2593 and its two counterpart bills would begin to address the dangers of predatory lending, they also would legitimize the abusive business model that exploits the CSO loophole of ch. 393 to evade the appropriate regulation of consumer loans required in ch. 342. By creating the “credit access business” designation within ch. 393, these bills would entrench the three-party lending model that uses a credit repair statute as a vehicle to make 500 percent interest rate consumer loans.

- SUBJECT:** Establishing performance-based funding for higher education
- COMMITTEE:** Higher Education — committee substitute recommended
- VOTE:** 8 ayes — Branch, Castro, Alonzo, Bonnen, Brown, Johnson, Lewis, Patrick
- 1 nay — D. Howard
- WITNESSES:** For — Bill Hammond, Texas Association of Business; Woody Hunt, Governor’s Business Council; Dennis Jones, Governor’s Business Council/ National Center for H.E. Management Systems; Drew Scheberle, Greater Austin Chamber of Commerce; (*Registered, but did not testify:* Leslie Helmcamp, Center for Public Policy Priorities)
- Against — Marianna Anaya; Yannis Banks, Texas NAACP; Ted Melina Raab, Texas American Federation of Teachers; Richard Moore, Texas Community College Teachers Association; Richard Rhodes, Texas Association of Community Colleges; Roberto Zarate, Community College Association of Texas Trustees; (*Registered, but did not testify:* Carlos Cardenas, Brenda Castillo, Christina Rodriguez, The University of Texas Student Longhorn LULAC; Chuck Hempstead, Texas Association of College Teachers; Jesse Romero, Texas Association for Bilingual Education; Velma Ybarra, League of United Latin American Citizens State)
- On —Luis Figueroa, Mexican American Legal Defense & Educational Fund (MALDEF); Fred Heldenfels, Raymund Paredes, Texas Higher Education Coordinating Board; Monica Martinez, Texas Education Agency; (*Registered, but did not testify:* Patricia Lopez, Texas Center for Education Policy; Angela Valenzuela, Texas Center for Education Policy – UT Austin)
- DIGEST:** CSHB 9 would establish the Higher Education Outcomes-Based Funding Act. It would require the Texas Higher Education Coordinating Board, in devising and establishing base formula funding recommendations for public institutions of higher education, to incorporate the goals identified in the long-range statewide plan into the agency’s funding recommendations.

The bill would emphasize the need to evaluate student achievement based on objective indicators of relative performance, such as degree completion rates, and to align those student outcomes with the state's educational goals and develop funding policy based on that evaluation.

In devising base funding formula recommendations to the Legislature, the coordinating board, in consultation with higher education institutions, would be required to consider undergraduate student success measures achieved during the preceding state fiscal biennium for base funding.

For general academic teaching institutions other than a public state college, the success measures the board would have to consider would have to include:

- the total number of bachelor's degrees awarded by the institution;
- the total number of bachelor's degrees in critical fields awarded by the institution;
- the total number of bachelor's degrees awarded by the institution to at-risk students; and
- the six-year graduation rate of students of the institution who initially enrolled in the fall semester immediately following their graduation from public high school in Texas, as compared to the six-year graduation rate predicted for those students based on the composition of the institution's student body.

For public junior colleges, public state colleges, or public technical institutes, the success measures considered by the board have to include the following academic progress measures achieved by students at the institution:

- successful completion of developmental education in math and English; the first college-level math and English course with a grade of "C" or higher; and the first 30 semester credit hours at the institution; and
- transfer to a four-year college or university after successful completion of at least 15 semester credit hours at the institution.

Success measures considered by the board also would include the total number of associate's and bachelor's degrees awarded by the institution, as well as certificates identified by the coordinating board as effective measures of student success.

The coordinating board would have to include in its findings and recommendations to the Legislature an evaluation of the effectiveness of these student success measures in achieving the purpose of the bill during the preceding state fiscal biennium, plus any related recommendations the coordinating board considered appropriate.

“At-risk” students would be defined as those undergraduate students who received Pell grants, who were 20 years old or older when they first enrolled in a higher education institution, had an SAT/ACT score lower than the national mean score, were enrolled as part-time students, or who had not received a high school diploma but had received a high school equivalency certificate within the last six years.

A “critical field” would be defined as a field of study in engineering, computer science, mathematics, physical science, allied health, nursing, and teaching certification in science or math. Beginning September 1, 2013, the coordinating board would be authorized to designate a critical field of study that was not currently designated as such or to remove a field of study from the list.

The coordinating board would adopt rules to administer these provisions, including rules requiring each higher education institution to submit to the coordinating board any student data or other information the coordinating board considered necessary.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

Texas needs to use finance policy to drive college completion, and for that reason, it is time for CSHB 9. For years, higher education funding formulas have essentially rewarded colleges and universities for student headcount, with little accountability for results. The current funding model for public higher education is not aligned with state needs. Texas has increased annual degree production since 2000, but too many students are falling through the cracks at too high a cost. According to the coordinating board, two-thirds of those who enrolled in post-secondary education in 2003 failed to graduate in 2009. That translates into taxpayer support for the unsuccessful college careers of more than 100,000 students during that time. Texas ranks third in state resources spent on first-year dropouts —\$470.5 million over a five-year period.

The latest progress report says that Texas must produce about 46,000 more degrees each year to reach our 2015 goal for success. More needs to be done to increase the number of students who graduate with certificates and degrees.

If the goal were to get more students to commencement and not just into the classroom, then it would make sense to distribute higher education formula funding in ways that recognized gains in both outcomes and enrollment. Demographers project the state will need to double the percentage of adults with at least an associate's degree to 60 percent by 2030 to be able to meet the demands of the state's future work force.

The state needs to make the most progress among at-risk students and to graduate more students in critical fields, such as science, technology engineering, and math. CSHB 9 would direct the coordinating board to consider degrees awarded in these areas in their general academic formula funding recommendations.

To account for the diverse student populations at state universities, the coordinating board would be directed to consider a metric that compared a university's actual six-year graduation rate to a predicted rate based on the institution's student body.

Since two-year institutions have different challenges, the bill would contemplate a separate set of metrics, commonly called "momentum points." Instead of focusing only on graduations, academic progress measures also would be recognized. Other states are moving toward this model, such as Washington, Indiana, and Ohio.

The notion of using these metrics as measures of success has been piloted with the performance incentive initiative, started in 2007. The 80th Legislature appropriated \$100 million in fiscal 2009 to the coordinating board to establish the initiative for the purpose of providing additional funding, outside of formula dollars, to institutions based on at-risk student enrollments and graduation rates of students in high-need fields.

The 81st Legislature enacted HB 51 by Branch, establishing the metrics for the initiative, including factors such as at-risk students and critical fields, and appropriated \$80 million for the initiative. The incentive fund was not funded under the current budget proposal.

CSHB 9 would not specify the final student success metrics, nor would it define the weighting of those metrics. The coordinating board would be required to consider certain metrics, but would have the flexibility to include or exclude additional metrics where appropriate. The bill would not determine the percentage of funding dedicated to the outcomes-based methodology, but instead would direct the coordinating board to examine the feasibility of incorporating performance-based measures into its formula funding recommendations. The Legislature also would decide the appropriate funding methodology and levels.

Claims that college doors could be closed to certain students who might be an academic gamble are unfounded. CSHB 9 would provide institutions an additional opportunity to gain funding by introducing student success measures into the formula. One of the metrics specifically would require the coordinating board to include in its formula recommendations graduation of at-risk students. The purpose of this metric would be to incentivize schools to accept and graduate students who had greater barriers to achieving their educational goals.

With limited state resources, it is more important than ever to demand more value from each dollar invested in higher education.

**OPPONENTS
SAY:**

While the state should promote student success, now is not the time to incorporate outcomes-based funding as part of higher education funding when institutions already are experiencing shrinking state support. Even though the bill would not specify any percentage dedicated to outcomes-based funding, any portion for outcomes-based funding should be in addition to base-level funding for two-year and four-year institutions and not be carved out of existing funding levels.

Dedicating a portion of an already decreased level of state appropriations to outcomes-based funding could cause institutions to lose state support. Institutions could not sustain any hold-back of state appropriations for the use of performance-based funding. This would be especially true for the state's community colleges. Other states, like Washington, use a similar approach to funding community colleges, but the funding model is used as incentive funding over and above base formula funding and does not supplant state funding.

Outcomes-based funding could produce unintended consequences, such as an institution's closing its doors to certain students who could be an

academic gamble, which would reduce access, or giving grades to students they had not earned because of the financial pressure to meet the benchmarks.

Implementing a funding structure based on the outcomes proposed by the bill at this time would be premature. Tying dollars directly to goals that community colleges have not yet achieved is problematic. It could disrupt the progress currently being made related to new program innovation that will eventually point to best practices.

SUBJECT: Requirements for schools and teacher contracts and compensation

COMMITTEE: Public Education — committee substitute recommended

VOTE: (*After second recommitment:*)
6 ayes — Eissler, Aycock, Huberty, Shelton, T. Smith, Weber

1 nay — Strama

4 absent — Hochberg, Allen, Dutton, Guillen

WITNESSES: For — HD Chambers; Jesus Chavez, Texas School Alliance; Lloyd Graham, La Porte ISD; Bill Hammond, Texas Association of Business; Michael Hinojosa, Texas School Alliance; Richard Middleton, North East ISD and Texas School Alliance, and Texas Association of School Administrators; Drew Scheberle, Greater Austin Chamber of Commerce; Charles Stafford, Denton ISD, Texas Association of School Boards, Communities in Schools of North Texas; David Thompson, Texas Association of School Administrators and TASB Council of School Attorneys; James Windham, Texas Institute for Education Reform; Howell Wright, Rockdale ISD, Texas Association of Mid-size Schools, Texas Association of Community Schools, and Texas Rural Education Association (*Registered, but did not testify:* Amanda Brownson, Fort Bend ISD; Patti Clapp, Dallas Regional Chamber; David Dunn, Texas Charter Schools Association; Andrew Erben, Texas Institute for Education Reform; Bill Grusendorf, Texas Association of Rural Schools; Lori Moya, Austin ISD; Sheryl Pace, Texas Taxpayers and Research Association; Don Rogers, Texas Rural Education Association.; Debbie Seeger, Corpus Christi ISD; Justin Yancy, Governor’s Business Council)

Against — Portia Bosse, Texas State Teachers Association; Lauren Dimitry, Texans Care for Children; Traci Dunlap, Education Austin, Texas American Federation of Teachers; Keith Elkins, Freedom of Information Foundation of Texas; Monty Exter, Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Judith Hutchinson, Education Austin and Texas AFT; Ted Melina Raab, Martha Owen, Texas American Federation of Teachers; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association (*Registered, but did not testify:* Harley Eckhart, Texas Elementary

Principals and Supervisors Association; Carrie Kroll, Texas Pediatric Society, Texas Medical Association, Texas Academy of Family Physicians, Texas Public Health Coalition; Martin Pena, South Texas Association of Schools; Joel Romo, American Heart Association; Michael Schneider, Texas Association of Broadcasters; Michelle Smith, Partnership for a Healthy Texas)

On — Kyle Ward, Texas PTA

BACKGROUND: **Minimum service requirement.** Education Code, sec. 21.401 requires a contract between a school district and an educator to be for a minimum of 10 months' service. An educator under a 10-month contract must provide a minimum of 187 days of service, except as provided by the commissioner of education in the case of a disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causing the closing of schools.

Certain school district employee contracts. There are three contracts by which a principal, teacher, supervisor, counselor, or other full-time professional employee can be employed by a school district — probationary, continuing, or term.

Probationary contracts. Education Code, sec. 21.102 requires a principal, teacher, supervisor, counselor, or other full-time professional employee who is new to the school district or who is in that employee's first or second school year to be employed under a one-year probationary contract. Probationary contracts may be used for up to three years for these employees, but may not be used for more than one year for an employee who has been employed as a teacher for at least five of the preceding eight years.

An employee on a probationary contract may be suspended without pay for the remainder of the school year or terminated for good cause at any time during the school year. To terminate an employee on a probationary contract, the school district must notify the employee 45 days prior to the last day of school. With written consent from the employee, a school district may return an employee employed on a term or continuing contract to a probationary contract in lieu of termination.

Term contracts. Education Code, subch. E permits a school to employ a principal, teacher, supervisor, counselor, or other full-time professional

employee for up to five years through a term contract. A school district must notify these employees 45 days prior to the last of day of the school year in which a contract expires whether the school district will be renewing the employee's contract. Employees who would wish to contest the nonrenewal of their contract must notify the school district board of trustees 15 days after receipt of the nonrenewal. The school board of trustees holds a hearing with a hearing examiner and the board determines whether the employee's contract will be renewed. The employee may appeal the board's decision to the commissioner of education.

Continuing contracts. Education Code, subch. D, permits a school to employ a principal, teacher, supervisor, counselor, or other full-time professional employee on continuing contract, which employs an employee until the person resigns, retires, is terminated for good cause, is released as a part of a necessary reduction of personnel, or is returned to probationary status. These contracts do not require an annual renewal. Reductions to personnel on continuing contracts must occur based on reverse seniority, often referred to as "first in, first out." If an employee wishes to protest a discharge, suspension without pay, or release due to a necessary reduction in personnel, the employee must notify the school district board of trustees by the 10th day after notification and receive a hearing before the board with a hearing examiner.

Minimum salary schedule. Education Code, sec. 21.402 requires a school district to pay each classroom teacher or full-time librarian, counselor, or school nurse a minimum monthly salary according to the minimum salary schedule, which is based on the employee's years of service and appropriations to the school finance system. Each employee advances one step on the minimum salary schedule for each year of experience until the maximum step is reached. For each year of work experience required for certification in a career or technological field, up to a maximum of two years, a certified career or technology education teacher is entitled to salary step credit as if the work experience were teaching experience. A district is required to credit the teacher, librarian, counselor, or nurse for each year of experience without regard to whether the years are consecutive.

TRS contributions. School districts are responsible for paying the portion of the state's contribution to the Teacher Retirement System (TRS) for the amount an employee earns above the minimum salary schedule.

Minimum class-size limits. Education Code, sec. 25.112 prevents a school district from enrolling more than 22 students in a kindergarten, first, second, third, or fourth grade class. School districts may apply to the commission of education for a waiver from the class-size limit if it works an undue hardship on the district. A waiver expires at the end of the school year for which it is granted. Districts must notify parents and guardians of students affected by the waiver.

DIGEST: CSHB 400 would amend provisions governing certain school district employee contracts, notification provided to employees about contract renewals, and the student-to-teacher ratio in certain classrooms.

Financial exigency. The bill would allow the board of trustees of a school district to adopt a resolution declaring a financial exigency for the district. The declaration would expire at the end of the fiscal year unless the board adopted a resolution before that time. The school board would not be limited in the number of times it could declare financial exigency and could terminate it whenever it considered it appropriate. It would have to notify the commissioner of education each time a resolution was adopted. The bill would grant rulemaking authority to the commissioner to prescribe the time and manner of this notification.

School district employee compensation. The bill would repeal the minimum salary schedule as the determinant of salaries for classroom teachers and full-time librarians, counselors, and school nurses.

A school district would have to adopt a strategic plan for determining compensation for the district's classroom teachers and full-time librarians, counselors, and school nurses, with the input of those employees. The plan would have to be designed to recruit, reward, and retain effective classroom teachers, librarians, counselors, and nurses. A school district would have to consider including provisions in its plan that took into account:

- demonstrated effectiveness in improving student achievement;
- service as a mentor to other classroom teachers;
- assumption of additional responsibilities;
- performance evaluations;
- whether the teacher taught a subject area or position in an acute shortage area if the teacher was highly qualified to teach that subject;

- whether the teacher taught more students than the average district teacher;
- whether the teacher was at a district school that had difficulty retaining classroom teachers or other professional employees; or
- other job-related duties, as determined by the district.

A school district's overall compensation plan could include nonfinancial compensation, including flexible scheduling or additional leave, and compensation for employees who met campus-wide goals.

The plan could not consider athletic coaching or athletic performance in determining compensation, and payment for service as a coach or with regard to extracurricular activities would have to be determined separately.

A school district would not be allowed to use this compensation plan to determine employee compensation before the 2012-2013 school year.

Certain school district employee contracts. The bill would repeal the requirement that teachers work for a minimum of 187 days over a 10-month contract.

The bill would require a school district to notify classroom teachers and full-time librarians, counselors, and school nurses employed under a probationary contract or whose contract was about to expire by the last day of school if the contract would not be renewed. The notice would have to be delivered personally to the teacher or mailed by regular mail or prepaid certified mail or by an express delivery service to the teacher's address on record. The notice would be considered given at the time of mailing.

The bill no longer would require a school district to terminate teachers on continuing contracts according to the reverse order of seniority.

The bill would allow a teacher who was terminated because the school district declared a financial exigency to request a hearing before the district's board of trustees or its designee. The teacher could appeal that decision to the commissioner. The commissioner could not substitute the commissioner's judgment for that of the board's unless the board's decision were not supported by substantial evidence.

State contribution to TRS for existing members. The bill would maintain the current minimum salary schedule only for use in determining the state's contribution to the Teacher Retirement System for current and future classroom teachers and full-time librarians, counselors, and school nurses.

The Legislative Budget Board would be required to review and make recommendations regarding this provision every four years.

Minimum class-size requirements. The bill would repeal the maximum limit of 22 students per class and instead require school districts to maintain a district-wide average of 22 students for each kindergarten through fourth grade class. A district could not assign more than 25 students per class in those grade levels. Any campus or district granted a waiver from these requirements by the commissioner of education would have to include in the notification to parents and guardians the district-wide average number of children in a class.

The bill also would remove the current requirement that there be no more than 10 students for each teacher in an accelerated instruction group administered by the school district.

Physical education assessments. The bill would require school districts to assess annually the physical fitness only of third through 12th grade students enrolled in a physical education course.

Public notice. The bill would amend the manner in which a school district notified the public of a budget and tax rate meeting, a hearing on the educational performance of the school district, and a financial management hearing. The board of trustees of a school district would have to provide notice of a hearing by sending an e-mail to media that serve the district, posting the notice and any required documents or summaries on the school district's website, and making the notice and any required documents or summaries available to the public at the district's central administrative office and at each campus in the school district. The bill no longer would require notice through a newspaper.

These requirements would apply to any meeting for which notice was required on or after the bill's effective date.

Joint elections. The bill would require that joint election agreements entered into with school districts include a provision that held a school district financially responsible for the proportion of expenses that corresponded to the proportion of the number of precincts within the school district's boundaries compared to the total number of precincts participating in the election.

The polling places for a bond election held as a part of a joint election would have to adequately and conveniently serve the voters and facilitate orderly conduct of the election.

Texas School for the Deaf. The bill would require the operating calendar for the Texas School for the Deaf to reflect the number of service days in a classroom teacher's contract, as well as provide the minimum number of required instructional days.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 400 would transform schools by providing necessary relief from mandates and increased local control to school districts, whose administrators are best equipped to make decisions to benefit their students. It would help school districts during the current budget crisis and save teacher jobs. It would help districts balance their budgets efficiently and mitigate the impact of budget cuts.

The bill would increase the efficiency of school districts. For example, it would eliminate the requirement that every student be tested for physical fitness. The current requirement results in students missing instructional time in core subjects. It makes more sense to only test the physical fitness of those students in a physical education class.

Financial exigency. The bill would explicitly grant a school district the ability to declare financial exigency annually and without limitation. Current law implies authority for a school district to declare financial exigency only when it permits a term contract employee to be released for financial exigency reasons. It is important for school districts to have this authority because by declaring financial exigency, a district could take certain actions to prevent a financial disaster. The actions include reducing

the number of certain school district employees, changing food contracts, and amending existing contracts.

Class-size requirements. A slight increase in the number of students per class would not hurt the quality of the student's education. There is no definitive research that shows that 22 students per teacher is the ideal number.

The bill would allow school districts to assign teachers to classrooms based on the student population, rather than to meet a 22-to-1 student-to-teacher ratio. Many school districts would benefit from being able to add a couple of students to a lower grade level class, decreasing the total number of classes for that grade level to place a teacher in a higher grade level classroom to reduce its class size. The ability to do so would increase the quality of education for the students in higher grades, but would not hurt the quality of education for the other students.

The requirement for school districts to notify parents if the district were to obtain a waiver for the class size requirements would bring transparency to waiver system. Parents have an inherent right to know these kinds of details about their children's lives and education.

School district employee compensation. The bill would allow school districts to set teachers', counselors', nurses', and librarians' salaries according to job market conditions instead of state mandates. Current law does not allow a salary decrease from 2010-2011 school year levels. The only legal means by which a district could reduce its costs would be reducing personnel. Under current law, instead of reducing everyone's salaries a small amount, the district's only option is to eliminate positions, which could lead to larger class sizes in secondary grades or reduced services to students.

School district employee contracts. The bill would increase the time a school district had to develop its budget and would allow decisions to be made with recent state appropriations figures. The current 45-day notification requirement for contract renewal before the end of the school year forces school districts to determine their budgets prior to knowing the state appropriation for the upcoming school year, which does not equip the school district to adapt to changing fiscal climates. During tough economic times, employees may be laid off before it is necessary. The bill

no longer would force school districts to rush their decision-making process, which would save jobs.

Receiving notice by the last day of school that an employee's contract would not be renewed would permit a teacher to remain focused and engaged for the entirety of the school year. Current notifications can cause teachers to use paid time off to remain out of the classroom for the remaining 45 days in the school year. State assessments occur near the end of the year, and it is detrimental to not have the teacher present for these preparations.

State contributions to TRS. Since the state's and the school districts' contributions to the Teacher Retirement System for classroom teachers and full-time librarians, counselors, and school nurses is based on the minimum salary schedule, it is necessary for it to remain in statute for this purpose only.

Public notice. The bill would allow school districts to communicate with the public more easily and cost-effectively. Allowing school districts to post notice for certain meetings electronically makes sense because many people read the news online rather than in newspapers.

OPPONENTS
SAY:

CSHB 400 is an attempt to balance the budget at the expense of teachers and the quality of education. All aspects of education should be impacted instead of relying on teachers to teach successfully in strained conditions and with decreased compensation.

This bill would not save school districts' money, nor would it help districts mitigate the effects of the budget crisis. The bill would not provide any possible savings until the next biennium at the earliest because teacher contracts have been executed for the next school year and cannot be materially changed.

Class-size requirements. The bill would harm the quality of public education by steering the system away from research-based practices. The majority of educational research demonstrates that smaller student-to-teacher ratios positively impact student learning.

Maintaining the current 22-student class-size limit for the early grades would save the state money in the long term. When the Legislature enacted the class-size requirements in 1984, the Perot Commission found

that it was better to invest money in more teachers for the early grades in order to prepare those students for later years by ensuring that they acquired literacy, reading comprehension, analytical skills, and other basic learning skills. Since the requirements were enacted, student performance has risen steadily over the past 26 years.

If school districts need flexibility in student-to-teacher ratios to save money or balance out teacher placement, school districts already can apply for a waiver from the commissioner of education. In the past five years, zero waivers have been denied, and only five have been denied since the requirement's inception. School districts could achieve the required flexibility and the state could maintain its high standards by maintaining the current 22-to-1 student-to-teacher requirement.

There should at least be an exemption for special education and special classrooms with few students to ensure an accurate district wide average.

Minimum salary schedule. The minimum salary schedule should be maintained because it protects school employees and ensures a baseline salary and longevity increases.

Maintaining the minimum salary schedule and flexibility are not mutually exclusive. A small tweak to the statute—deleting sec. 21.402, Education Code, which requires that an employee's salary remain at the level of the 2010-2011 school year— would allow school districts to reduce teachers' and certain other employees' salaries, if necessary.

The bill instead would guarantee a permanent decrease in teacher salaries. The minimum salary schedule is tied to the school finance formulas, so an increase in that appropriation would increase the baseline minimum salaries. When given the choice, school districts have not chosen to spend money on teachers. The longevity increases afforded in the minimum salary schedule amount to a cost of living increase for these employees. Without a mandatory increase in salary for longevity, school districts would not provide periodic and deliberate cost of living increases.

The state struggles to retain highly qualified teachers with proven track records of increasing student achievement. Decreasing teacher pay would exacerbate the problem. To attract the top students in the state to become teachers, their salary must compete with that of corporate jobs. If we have

the best people as teachers, the state would not have to worry about issues such as class size.

Some claim that the bill would allow school districts to supplement the compensation plan with incentive pay for teacher performance. That assumption would not address the lower salaries that counselors, librarians, and nurses would face. The state is too focused on incentive pay for teachers as the miracle solution for public education. Education research does not present compelling evidence that this approach makes any meaningful change to student performance. To improve student performance, the state should be investing in teacher salaries to make the profession attractive to college students.

Seniority for continuing contracts. The removal of the seniority provision would leave veteran teachers vulnerable when a school district sought to alleviate budget constraints since they have the highest salaries.

The removal of this provision would illegally alter the contract rights of teachers who had a continuing contract. This change would make a material change to the terms of the existing contract, which is prohibited as determined by *Central Education Agency v. George West I.S.D.*, 783 S.W.2d 200 (Tex. 1989), which held that material terms of a contract cannot be abrogated during the term of a contract. *James v. Hitchcock I.S.D.*, 742 S.W.2d 701 (Tex. App. – Houston [1st Dist.] 1987, writ denied) held that continuing contract terms continue in effect until the employee resigns, retires, is terminated for good cause, is released as a part of a necessary reduction of personnel, or is returned to probationary status. These employees have the protections afforded by the existing continuing contract provisions because the district has chosen to employ its teachers under continuing contracts and the district has determined that the teacher's performance warrants being placed on a continuing contract.

School district employee contracts. Receiving notice on the last day of school that an employee's contract would not be renewed would not provide proper notice to the employee. The 45-day rule allows teachers an opportunity to search for a new job. Job fairs occur in the spring semester, and teachers need to know at that time whether they should be looking for a job. The bill would result in more teachers choosing to contest a proposed nonrenewal since they would not have any other viable employment options. Current law provides the proper balance between the teachers' and the districts' interests.

The bill likely would cause a nonrenewal hearing to take place over the summer and conclude well after other districts had already completed their hiring for the following school year.

State contribution to TRS for existing members. The bill no longer would tie the minimum salary schedule to the school finance system, which would mean the schedule amounts would go unchanged. If these amounts did not increase and employee salaries increased over time, the school district's portion of the TRS contribution would increase disproportionately.

Public notice. The bill should not remove the requirement that notices be printed in the local newspaper because 27 percent of Texans do not have Internet service. There is no assurance that those with Internet service would see the posting unless they were deliberately looking for it.

Physical fitness. The state should continue to assess each student for physical fitness. Obesity is a significant problem, and obese children are likely to be sick adults, which ultimately would mean higher health-care costs for the state.

OTHER
OPPONENTS
SAY:

The drastic changes proposed in CSHB 400 should be temporary during the budget crisis and examined more closely in more prosperous times, especially the changes to the class-size requirements.

School district employee compensation. The implementation time frame for the strategic compensation plan should be two years to ensure that research and stakeholder input were adequately considered.

School district employee contracts. The bill should ensure that the delivery of the notice was considered received when the employee had actually received the notice by the deadline, not just that the district put the notice in the mail.

Financial exigency. The bill's provisions permitting a school district to declare financial exigency are unnecessary, as they are permitted to do this under current law.

NOTES:

HB 400 originally was reported from the Public Education Committee on April 5 and set on the Major State Calendar for April 26, when it was returned to committee after a point of order was sustained. The bill was

reported from committee again on April 26, then on April 27 was returned to committee a second time on a motion by Rep. Eissler and was reported again. The bill was set on the Major State Calendar for May 6, and after floor consideration of several amendments, it was returned to the Calendars Committee after a point of order against the bill was sustained. After a corrected committee report was distributed, the bill was set on the May 9 Major State Calendar. After another point of order was sustained, the bill was again returned to the Calendars Committee, and after a corrected committee report was distributed, the bill was set on the May 12 Major State Calendar.

- SUBJECT:** Spouses inheriting a totally disabled veteran's homestead tax exemption
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Murphy, Ritter, Villarreal, Woolley
- 0 nays
- 1 absent — Martinez Fischer
- WITNESSES:** For — James Cunningham, Texas Coalition of Veterans Organizations, Council of Chapter Military Officers Association of America; Morgan Little, Texas Coalition of Veterans Organizations; (*Registered, but did not testify*: Marida Favia del Core Borrromeo, Exotic Wildlife Association; Carlos Higgins, Texas Silver-Haired Legislature; Patrick Reilly)
- Against — None
- On — Tim Wooten, Texas Comptroller
- BACKGROUND:** Tax Code, sec. 11.131 fully exempts the residential homesteads of totally disabled veterans from property taxes.
- DIGEST:** HJR 48 would allow the surviving spouse of a totally disabled veteran to continue to receive the property tax exemption on a homestead after the totally disabled veteran's death. A homestead would qualify if:
- it had received the full exemption from property taxes under the totally disabled veteran's exemption;
 - the surviving spouse had not remarried;
 - the property was the residence homestead of the surviving spouse when the totally disabled veteran died; and
 - the property remained the residence homestead of the surviving spouse.
- The provision would take effect January 1, 2012, and would apply only to a tax year beginning on or after that date.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: “The constitutional amendment authorizing the legislature to exempt from ad valorem taxation the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran in an amount equal to the amount of the residence homestead exemption to which the disabled veteran was entitled on the same property.”

**SUPPORTERS
SAY:**

Current law provides a full exemption from property taxes on the residential homesteads of totally disabled veterans. Unfortunately, this exemption does not transfer to a surviving spouse upon the death of a veteran. As a result, the loss sustained by the surviving spouse is compounded with the need to figure out how to pay for unexpected property-tax bills.

As these disabled veterans face the end of their lives, their greatest concern is over the fate of their families. HJR 48 and its accompanying enabling legislation would provide them with some measure of peace of mind.

Texas already grants certain surviving spouses the right to inherit other property tax breaks. For instance, the school tax freeze awarded to the owner of a residential homestead at age 65 is transferable to a surviving spouse as long as the spouse is at least 55 years old at the time of the transfer. HJR 48 and its enabling legislation would be a sensible extension of this policy.

While the current enabling legislation carries a fiscal note, that bill would not remove property from the tax rolls, but only would extend the time such property remained off the rolls. Further, enabling legislation could be changed to address some of the costs in the out years. An example would be requiring the surviving spouse to apply yearly for the exemption to ensure that a remarried spouse did not receive the exemption for a longer period than was necessary. Another example would be allowing the exemption to follow the surviving spouse into a new homestead property. If the spouse moved to a less valuable property, then the more valuable original homestead would be returned to the property tax rolls. If the surviving spouse moved to a more valuable property, the spouse would be able to exempt only the value of the original homestead.

OPPONENTS
SAY:

By extending the time that certain properties remain exempted from property taxes, HJR 48 would decrease revenue to the state and local governments. According to the LBB's fiscal note, the enabling legislation for HJR 48, HB 472 by C. Anderson, would cost \$1.1 million in general revenue funds in fiscal 2012-13 and \$6 million in fiscal 2014-15. It would cost local governments several million dollars as well. The state cannot continue to grant tax exemptions when schools, health care, and other essential programs are critically underfunded.

NOTES:

The enabling legislation, HB 472 by C. Anderson, was reported favorably without amendment by the House Ways and Means Committee on May 6 and was referred to the Local and Consent Calendars Committee.

The companion joint resolution, SJR 21 by Patrick, was considered in the Senate Finance Committee on March 21 and left pending.